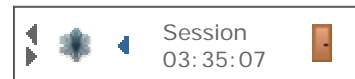


Comments on Prop 84 and Prop 1E Draft Guidelines

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To: DWR IRWM Grants

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I would like to submit a few comments for the record about the July 2012 Prop 84 and Prop 1E Draft Guidelines found on the CA DWR website:

1. Requirements to follow State laws which aren't enforceable on Tribal trust land could be problematic. If these requirements cannot be modified for projects on Tribal trust land, that would appear to inherently disqualify Tribes as applicants for funding. If this is not the State's intent, perhaps setting up an alternative to follow analogous federal laws on Tribal trust land would meet the State's needs without creating a legal issue. Two examples I can quickly note below:
 - a. Page 23: Labor Code Compliance – California Labor Code cannot be enforced on Tribal Lands. Recommend that, for projects taking place on Tribal trust lands, Davis-Bacon federal wage determinations and Federal OSHA standards be the applicable standards.
 - b. Page 23: CEQA – Again, CEQA cannot be enforced on Tribal Lands. Perhaps NEPA would be an acceptable alternative, with an appropriate federal agency to act as the Tribe's partner as lead agency for NEPA compliance purposes. I would think that the Indian Health Service, US EPA, and Bureau of Reclamation would all be potential federal partners who would be glad to help out Tribal customers in this regard.
2. I have found MHI data available from the census to often be extremely inaccurate for Indian Reservations. I think there is a flaw in the methodology. My recommendation is that any Indian Reservation which is an applicant for funding be considered a DAC automatically. If the onus is on a Tribe to disprove faulty MHI data with limited resources and limited time available in the application process, this will be a big deterrent to Tribal participation in the IRWM process.
 - a. I saw some data recently that suggested the MHI at the Manzanita Indian Reservation was over \$105,000, the MHI at the La Jolla Indian Reservation was \$65,000, and the MHI at the Mesa Grande Indian Reservation was \$49,000. None of these are gaming Tribes, and one look at these reservations will show that these numbers can't possibly be accurate.
 - b. When I was working with the Santa Rosa Indian Reservation (not to be confused with the Santa Rosa Rancheria) on a project for USDA Rural Development, we found the MHI was very inaccurate because all of the Tribe's general revenues were assumed to be split between evenly between all Tribal households, and none spent on Tribal governance. This is an inaccurate assumption, and possibly the source of the bad methodology.
3. Perhaps as an alternative to considering all Tribes to be DACs for grant purposes (suggested above), it may be appropriate to have a different set-aside for Tribal applicants. Most California Indian Reservations and Rancherias are very small (<100 homes total) and cannot possibly prepare a meaningful project at a cost per home comparable to large municipal or regional entities. If there were a 5-10% set aside for Indian communities, they would compete against each other on a more level playing field, thus allowing Indian communities a better opportunity to qualify for grant funds.
4. Generally speaking, the goal of seeking multi-agency collaboration in projects is a good one. However, for Tribal projects, many Tribes have sought self-sustainability and independence in administering their water and environmental resources. This should be a consideration in funding distribution methodology in the different IRWM regions – maybe put more emphasis on multiple beneficial uses and less emphasis on multi-agency collaboration for projects in which Tribes are the applicant.

Thank you for consideration of my comments. Please do not hesitate to contact me with questions.

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